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**MAILED**  
**NOV 02 2010**  
**OFFICE OF PETITIONS**

In re Application of	:	
HARLEY et al.	:	DECISION ON APPLICATION
Application No. 10/562,374	:	FOR
Filed: 03/09/2007	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 510/002	:	

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION, filed March 10, 2010, which is being treated as a petition under 37 CFR 1.705(b). Applicants request correction of the patent term adjustment from three hundred sixty-seven (367) days to four hundred forty-seven (447) days partly on the basis of the Office taking in excess of three years to issue the patent.

To the extent the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee<sup>1</sup>.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the Notice of Allowance, the request is GRANTED TO THE EXTENT INDICATED.

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<sup>1</sup> For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office has updated the PALM and PAIR screens to reflect that the corrected Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **twenty-two (22) days**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

A review of the application history confirms that applicants' characterization of the basis for and the amount of reduction of three hundred forty-five (345) days of patent term in this application at the time of the mailing of the notice of allowance are proper.

In view thereof, the corrected determination of patent term adjustment at the time of the mailing of the notice of allowance is **twenty-two (22) days** (367 days of Office delay - 345 days of applicant delay).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

*C. T. Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/562,374

Filing or 371(c) Date:	03-09-2007	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	367
A Delays:	367	PTO Manual Adjustments:	-345
B Delays:	0	Applicant Delays:	0
C Delays:	0	Total PTA Adjustments:	22

### Patent Term Adjustment History Explanation Of Calculations

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
90	10-28-2010	Adjustment of PTA Calculation by PTO		132	0
89	10-28-2010	Adjustment of PTA Calculation by PTO		183	0
88	10-28-2010	Adjustment of PTA Calculation by PTO		30	0
70	12-11-2009	Mail Notice of Allowance	11		49
69	12-09-2009	Information Disclosure Statement (IDS) Filed			0
68	12-07-2009	Document Verification			0
67	12-07-2009	Notice of Allowance Data Verification Completed			0
66	12-07-2009	Case Docketed to Examiner in GAU			0
65	12-01-2009	Examiner Interview Summary Record (PTOL - 413)			0
64	12-02-2009	Examiner's Amendment Communication			0
63	12-02-2009	Notice of Allowability			0
60	11-03-2009	Information Disclosure Statement considered			0
59	07-30-2009	Information Disclosure Statement considered			0
57	11-03-2009	Information Disclosure Statement (IDS) Filed			0
56	03-11-2009	Reference capture on IDS			0
55	03-10-2009	Information Disclosure Statement (IDS) Filed			0
54	09-29-2009	Change in Power of Attorney (May Include Associate POA)			0
53	03-13-2009	Information Disclosure Statement (IDS) Filed			0

52	09-25-2009	Correspondence Address Change		0
51	07-30-2009	Information Disclosure Statement (IDS) Filed	0	49
50	09-23-2009	Date Forwarded to Examiner		0
49	07-30-2009	Response after Non-Final Action		0
48	09-18-2009	Change in Power of Attorney (May Include Associate POA)		0
47	08-26-2009	Mail-Petition Decision - Granted		0
46	08-26-2009	Petition Decision - Granted		0
45	08-25-2009	Correspondence Address Change		0
44	07-30-2009	Information Disclosure Statement (IDS) Filed		0
43	06-25-2009	Petition Entered		0
42	04-30-2009	Mail Non-Final Rejection	356	18
41	04-27-2009	Non-Final Rejection		0
40	03-11-2009	Information Disclosure Statement considered		0
39	10-30-2008	Information Disclosure Statement considered		0
38	03-13-2009	Information Disclosure Statement considered		0
35	03-13-2009	Information Disclosure Statement (IDS) Filed		0
34	03-11-2009	Information Disclosure Statement (IDS) Filed		0
31	10-30-2008	Reference capture on IDS		0
30	10-30-2008	Information Disclosure Statement (IDS) Filed		0
29	10-30-2008	Information Disclosure Statement (IDS) Filed		0
27	07-23-2008	Change in Power of Attorney (May Include Associate POA)		0
26	07-23-2008	Case Docketed to Examiner in GAU		0
25	07-23-2008	Correspondence Address Change		0
24	07-02-2008	IFW TSS Processing by Tech Center Complete		0
23	07-23-2007	Miscellaneous Incoming Letter		0

20	05-15-2008	PG-Pub Issue Notification	0
19	02-19-2008	Application Dispatched from OIPE	0
18	03-09-2007	371 Completion Date	0
17	02-11-2008	Sent to Classification Contractor	0
16	02-11-2008	Notice of DO/EO Acceptance Mailed	0
15	02-11-2008	Filing Receipt	0
14	03-09-2007	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
13	03-09-2007	CRF Disk Has Been Received by Preexam / Group / PCT	0
12	03-09-2007	Additional Application Filing Fees	0
11	03-09-2007	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
9	07-23-2007	Mail-Petition Decision - Granted	0
8	03-09-2007	Petition Entered	0

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